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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4368

11 **DENISE VILLALVA**
12 910 E. Hydepark Blvd
13 Inglewood, CA 90302

A C C U S A T I O N

14 Pharmacy Technician Registration
No. TCH 104569

15 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about June 29, 2010, the Board of Pharmacy ("Board") issued Pharmacy
23 Technician Registration No. TCH 104569 to Denise Villalva ("Respondent"). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on October 31, 2013, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 118, subdivision (b), provides in pertinent part that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 490 states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

6. Section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

7. Section 4301 states, in pertinent part:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

....

"(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

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2 "(j) The violation of any of the statutes of this state, or any other state, or of the United
3 States regulating controlled substances and dangerous drugs.

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5 "(l) The conviction of a crime substantially related to the qualifications, functions, and
6 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
7 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
8 substances or of a violation of the statutes of this state regulating controlled substances or
9 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
10 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
11 The board may inquire into the circumstances surrounding the commission of the crime, in order
12 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
13 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
14 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
15 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
16 of this provision. The board may take action when the time for appeal has elapsed, or the
17 judgment of conviction has been affirmed on appeal or when an order granting probation is made
18 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
19 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
20 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
21 indictment.

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23 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
24 violation of or conspiring to violate any provision or term of this chapter or of the applicable
25 federal and state laws and regulations governing pharmacy, including regulations established by
26 the board or by any other state or federal regulatory agency."

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1 **REGULATORY PROVISIONS**

2 8. California Code of Regulations, title 16, section 1770 states, in pertinent part:

3 "For the purpose of denial, suspension, or revocation of a personal or facility license
4 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
5 crime or act shall be considered substantially related to the qualifications, functions or duties of a
6 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
7 licensee or registrant to perform the functions authorized by his license or registration in a manner
8 consistent with the public health, safety, or welfare."

9 **COST RECOVERY**

10 9. Section 125.3 states, in pertinent part, that the Board may request the administrative
11 law judge to direct a licensee found to have committed a violation or violations of the licensing
12 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
13 case.

14 **CONTROLLED SUBSTANCES**

15 10. "Marijuana," is a Schedule I controlled substance as defined in Health and Safety
16 Code section 11054, subdivision (d)(13), and is categorized as a dangerous drug pursuant to
17 section 4022.

18 11. "Methamphetamine," is a Schedule II controlled substance as designated by Health
19 and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug
20 pursuant to Business and Professions Code section 4022.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Conviction of a Substantially Related Crime)**

23 12. Respondent's license is subject to discipline under sections 4301, subdivision (l) and
24 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
25 Respondent has been convicted of a crime substantially related to the qualifications, functions or
26 duties of a pharmacy technician. On or about June 27, 2011, after pleading nolo contendere,
27 Respondent was convicted of one misdemeanor count of violating Health and Safety Code section
28 11377, subdivision (a) [possession of a controlled substance] in the criminal proceeding entitled

1 *The People of the State of California v. Denise Villalva* (Super. Ct. Los Angeles County, 2011,
2 No. 11G02641). The Court sentenced Respondent to serve two (2) days in Los Angeles County
3 Jail and placed her on probation for a period of twelve (12) months, with terms and conditions.
4 The circumstances surrounding the conviction are that on or about April 10, 2011, Inglewood
5 Police Department officers conducted a traffic stop on a vehicle Respondent was a passenger in.
6 While speaking to Respondent the officer detected an odor of Marijuana emitting from the
7 vehicle. The officer conducted a search of the vehicle and found in Respondent's purse a plastic
8 bottle containing a green leafy substance resembling Marijuana and two clear plastic baggies
9 inside a white plastic container that contained a white crystal like substance resembling
10 Methamphetamine. Respondent was subsequently arrested for violating Health and Safety Code
11 section 11357, subdivision (b) [possession of marijuana], and Health and Safety Code section
12 11377, subdivision (a) [possession of a controlled substance].

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Possession of a Controlled Substance)**

15 13. Respondent's license is subject to discipline under section 4301, subdivisions (j) and
16 (o), in that on or about April 10, 2011, Respondent was found to be in possession of a controlled
17 substance. Complainant refers to, and by this reference incorporates, the allegations set forth
18 above in paragraph 12, as though set forth fully.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Knowingly Making a False Statement of Fact)**

21 14. Respondent's license is subject to discipline under section 4301, subdivision (g), in
22 that Respondent knowingly made a false statement of fact to the Board by failing to disclose her
23 2011 conviction on her renewal application for licensure. Complainant refers to, and by this
24 reference incorporates, the allegations set forth above in paragraph 12, as though set forth fully.

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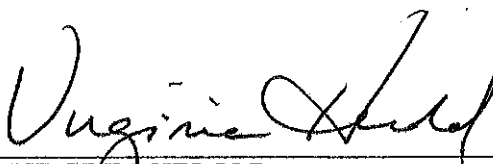
PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Pharmacy Technician Registration No. TCH 104569, issued to Denise Villalva;
2. Ordering Denise Villalva to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

5/9/13



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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